

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

UNITED STATES OF AMERICA

v.

JOHN M. VOLPENTESTA

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No. 07 CR 50049

Hon. Philip G. Reinhard

Magistrate Judge Mahoney

AGREED MOTION FOR EARLY RETURN OF TRIAL SUBPOENAS

The UNITED STATES OF AMERICA, by PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, hereby submits the following agreed motion for an order allowing the parties to issue trial subpoenas requiring that documents be produced prior to the date of trial. In support of this motion, the United States states as follows:

1. Federal Rule of Criminal Procedure 17(c)(1) provides that a district court may order that witnesses produce documents prior to trial. Specifically, the rule states: "A subpoena may order the witness to produce any books, papers, documents, data, or other objects the subpoena designates. The court may direct the witness to produce the designated items in court before trial or before they are to be offered in evidence. When the items arrive, the court may permit the parties and their attorneys to inspect all or part of them."

2. In the present case, the United States anticipates a need to subpoena a significant amount of additional documents prior to trial. For example, Counts Twenty One, Twenty Two, and Twenty Three charge defendant with failing to file personal federal income tax returns for the years 2003 through 2005. In order to prove these charges, the United States will be required to establish that, in each of the years charged, defendant had sufficient gross income to trigger the filing requirement. Specifically, the United States will be required to prove the amount of income defendant received in each of these years from Volpentesta Construction, Inc., which was the

construction business that defendant owned. In order to accomplish this task, the United States must subpoena records relating to deposits made into the bank accounts of Volpentesta Construction, Inc.

3. Early production of subpoenaed records will allow the trial to be conducted more efficiently and expeditiously. Specifically, by reviewing the subpoenaed documents prior to trial, the United States will be able to identify relevant documents and summarize them for presentation in court.

4. The United States agrees to permit defense counsel to inspect all subpoenaed documents prior to trial.

5. During a telephone conversation on April 24, 2008, defendant's attorney, Paul E. Gaziano, Esq., informed the undersigned Assistant United States Attorney ("AUSA") that he has no objection to this motion.

6. The parties agree that this order should be reciprocal so that defense counsel may require early return of trial subpoenas.

7. For purposes of efficiency, the United States requests that the parties be allowed to require that documents be produced to the attorneys for the parties, rather than directly to the court.

8. Because this motion is submitted upon stipulation, notice of presentment is not required. Local Rule 5.3(a).

WHEREFORE, for the reasons set forth above, the United States respectfully requests that this Court enter an order allowing the parties to issue trial subpoenas requiring that documents be produced prior to the date of trial at the offices of the attorneys for the parties.

Respectfully submitted,

PATRICK J. FITZGERALD
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CERTIFICATE OF SERVICE

The undersigned Assistant United States Attorney hereby certifies that in accordance with FED. R. CRIM. P. 49, FED. R. CIV. P. 5, LR5.5, and the General Order on Electronic Case Filing (ECF), the foregoing: “Agreed Motion for Early Return of Trial Subpoenas” was served on April 25, 2008, pursuant to the district court’s ECF system, on all ECF filers.

/Scott A. Verseman

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